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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 BLAINE WILMOTTE and MADISON )  
11 WILMOTTE, )  
12 Plaintiffs, ) Case No.  
13 v. )  
14 NATIONAL RAILROAD PASSENGER ) NOTICE OF REMOVAL TO  
15 CORPORATION, d/b/a AMTRAK, ) FEDERAL COURT  
16 Defendant. )  
17

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18 Defendant National Railroad Passenger Corporation d/b/a Amtrak ("Amtrak") by and  
19 through its attorneys, hereby removes the above-captioned action, currently pending in the  
20 Superior Court of King County, Washington, to the United States District Court for the Western  
21 District of Washington. Removal is based on 28 U.S.C. §§ 1331, 1332, 1349, and 1367 and  
22 authorized by 28 U.S.C. §§ 1441 and 1446. As grounds for removal, Defendant states:

23 **I. BACKGROUND**

24 Plaintiffs commenced this action by filing their lawsuit in King County Superior Court,  
25 on or about January 4, 2018, under Cause No. 18-2-00455-1 SEA (the "State Court Action").  
26 Pursuant to LCR 101(b), a true and correct copy of the operative complaint in the State Court  
27 Action is appended hereto as Exhibit A.

**II. STATUTORY REQUIREMENTS**

A. Federal Question Jurisdiction. Federal question jurisdiction exists in this action

NOTICE OF REMOVAL TO FEDERAL COURT - 1

019188.0392/7190353.1

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1 because Plaintiffs have asserted a claim against Amtrak, a federally chartered corporation whose  
 2 majority stockholder is the United States of America.

3       Amtrak was created under the Rail Passenger Service Act of 1970, 45 U.S.C. § 541, *et*  
 4 *seq.* (recodified as 49 U.S.C. § 24101-24709) and is therefore a federally chartered corporation.  
 5 In the *Pacific Railroad Removal Cases*, 115 U.S. 1 (1885), the United States Supreme Court  
 6 ruled that an action against a federally chartered corporation presented a federal question under  
 7 28 U.S.C. § 1331. As a result, this Court has original jurisdiction of this action against Amtrak  
 8 under 28 U.S.C. § 1331, which provides for original jurisdiction in cases that arise under the laws  
 9 of the United States, and 28 U.S.C. § 1349, which provides for original jurisdiction over claims  
 10 against corporations where the United States owns more than 50 percent of the capital stock. *See*  
 11 *Aliotta v. National R.R. Passenger Corporation*, 315 F.3d 756 (7th Cir. 2003); *Walker v. National*  
 12 *R.R. Passenger Corp.*, 703 F. Supp. 2d 495, 500 (D. Md; 2010) and *Hollus v. Amtrak*, 937 F.  
 13 Supp. 1110, 1113-14 (D. N.J. 1996).

14           B.     Diversity Jurisdiction.

15           1.     Complete Diversity Exists. Diversity jurisdiction exists in this action because  
 16 Plaintiffs and Amtrak are citizens of different states. 28 U.S.C. § 1332(a)(1). “Complete  
 17 diversity exists when the parties are domiciled in separate states.” *Umooyo v. Bank of Am., N.A.*,  
 18 No. 2:16-CV-01576-RAJ, 2017 WL 1532664, at \*2 (W.D. Wash. Apr. 28, 2017) (citing *Kantor*  
 19 *v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). Plaintiffs are domiciled in and are  
 20 therefore citizens of Idaho. Yates Decl. ¶ 3; *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088,  
 21 1090 (9th Cir. 1983). “Amtrak is a citizen only of the District of Columbia when deciding  
 22 original jurisdiction of the district courts of the United States in a civil action.” 49 U.S.C.  
 23 § 24301(b). Plaintiffs and Amtrak are therefore citizens of different states for diversity  
 24 jurisdiction purposes. Finally, the citizenship of “Doe” defendants is disregarded for purposes  
 25 of the diversity jurisdiction analysis. 28 U.S.C. § 1441(b). *See* Complaint at ¶ 1.5.

26           2.     Amount in Controversy. The Complaint seeks economic and noneconomic  
 27 damages for alleged serious physical and mental injuries arising out of the December 18, 2017

1 derailment of Amtrak Cascades Train No. 501. Complaint ¶¶ 5.1-5.2. Given the nature of  
 2 Plaintiffs' claims and alleged damages, Amtrak alleges that the amount in controversy is expected  
 3 to exceed the jurisdictional threshold of \$75,000. *See Dart Cherokee Basin Operating Co., LLC*  
 4 *v. Owens*, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014) (explaining that a removing defendant  
 5 need only make "a plausible allegation that the amount in controversy exceeds the jurisdictional  
 6 threshold" if the amount is not specified). The amount in controversy requirement is met.

### 7           III. PROCEDURAL REQUIREMENTS

8           A. Removal to this Court Is Proper. Pursuant to 28 U.S.C. §§ 1441(a)-(b) and  
 9 1446(a), Defendant files this Notice of Removal in the United States District Court for the  
 10 Western District of Washington, which is the federal district court embracing the state court  
 11 where Plaintiffs have brought the State Court Action - King County, Washington. Venue is  
 12 proper in this district pursuant to 28 U.S.C. 1391(a) and 28 U.S.C. 128(b).

13           B. Removal Is Timely. Amtrak was served with a copy of the Summons and  
 14 Complaint in the State Court Action on or about January 17, 2018. Yates Decl. ¶ 4. Defendant  
 15 has filed this Notice within 30 days after its receipt of the Complaint in the State Court Action  
 16 on or about January 4, 2018. As such, removal is timely. *See* 28 U.S.C. § 1446(b)(2)(B).

17           C. Consent. Consent is not required for removal under 28 U.S.C. § 1331 and there  
 18 are no other defendants from whom to obtain consent to the extent this matter is removed under  
 19 28 U.S.C. § 1332.

20           D. Bond and Verification. Pursuant to Section 1016 of the Judicial Improvements  
 21 and Access to Justice Act of 1988, no bond is required in connection with this Notice of Removal.  
 22 Pursuant to Section 1016 of the Act, this Notice need not be verified.

23           E. Signature. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See*  
 24 28 U.S.C. § 1446(a).

25           F. Pleadings and Process. True and correct copies of the pleadings on file in the  
 26 State Court Action, including a current docket sheet, are attached to the Yates Decl. as Exhibit  
 27 A. *See* 28 U.S.C. § 1446(a). Amtrak has paid the appropriate filing fee to the Clerk of this Court

1 upon the filing of this Notice.

2 G. Notice. Amtrak will promptly serve Plaintiffs and file with this Court its Notice  
3 of Removal to Plaintiffs, informing Plaintiffs that this matter has been removed to federal court.  
4 See 28 U.S.C. §§ 1446(a), (d). Amtrak will also promptly file with the Clerk of the Superior  
5 Court of Washington, County of King, and serve on Plaintiffs, a Notice to Clerk of Removal to  
6 Federal Court, pursuant to 28 U.S.C. § 1446(d).

7 WHEREFORE, this action should proceed in the United States District Court for the  
8 Western District of Washington, as an action properly removed thereto.

9 DATED this 19th day of January 2018.

10 LANE POWELL PC

11  
12 By: /s/ Tim D. Wackerbarth  
13 Tim D. Wackerbarth, WSBA No. 13673  
wackerbarth@lanepowell.com

14 By: /s/ Andrew G. Yates  
15 Andrew G. Yates, WSBA No. 34239  
yatesa@lanepowell.com

16 By: /s/ Warren E. Babb, Jr.  
17 Warren E. Babb, Jr., WSBA No. 13410  
babbw@lanepowell.com

18 By: /s/ Rachel B. Greenlee  
19 Rachel B. Greenlee, WSBA No. 49873  
greenleer@lanepowell.com

20 Attorneys for Defendant National Railroad  
21 Passenger Corporation d/b/a Amtrak

**CERTIFICATE OF SERVICE**

I, hereby certify under penalty of perjury of the laws of the State of Washington that on the 19th day of January 2018, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

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 by First Class Mail  
 by Hand Delivery  
 by Overnight Delivery

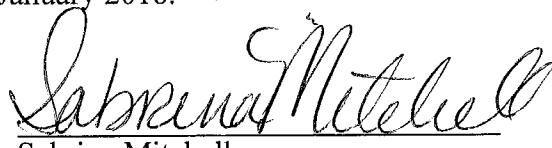
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DATED this 19th day of January 2018.



Sabrina Mitchell

NOTICE TO CLERK OF REMOVAL OF ACTION TO FEDERAL  
 COURT - 5  
 No. 18-2-00341-5

019188.0392/7190353.1

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1 THE HONORABLE DOUGLAS NORTH  
2  
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

8 BLAINE WILMOTTE and MADISON )  
9 WILMOTTE, )  
10 Plaintiffs, ) No. 18-2-00455-1 SEA  
11 v. )  
12 NATIONAL RAILROAD PASSENGER )  
13 CORPORATION d/b/a AMTRAK, )  
14 Defendant. )  
15

TO: THE CLERK OF KING COUNTY SUPERIOR COURT;

AND TO: ROBERT GELLATLY, DAVID BENINGER AND ANDREW HOYAL  
and LUVERA LAW FIRM, and to ROBERT CLIFFORD, MICHAEL  
KRZAK, SEAN DRISCOLL and CLIFFORD LAW OFFICES, Attorneys  
for Plaintiff:

NOTICE IS HEREBY GIVEN, pursuant to 28. U.S.C. § 1441 *et seq.*, that on January  
19, 2018, Defendant National Railroad Passenger Corporation d/b/a Amtrak (“Amtrak”), by  
and through its attorneys, filed a Notice of Removal to Federal Court, removing this action to  
the United States District Court for the Western District of Washington.

True and correct copies of the Notice of Removal to Federal Court and the Notice to  
Plaintiff of Removal to Federal Court are attached hereto.

NOTICE TO CLERK OF REMOVAL OF ACTION TO FEDERAL  
COURT - 1  
No. 18-2-00455-1

019188.0392/7190485.1

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1 DATED this 19th day of January, 2018  
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3

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8 Tim D. Wackerbarth, WSBA No. 13673  
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13 By /s/ Warren E. Babb, Jr.  
14 Warren E. Babb, Jr., WSBA No. 13410  
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16 By /s/ Rachel B. Greenlee  
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18 greenleer@lanepowell.com

19 Attorneys for Defendant National Railroad  
20 Passenger Corporation d/b/a Amtrak  
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27

NOTICE TO CLERK OF REMOVAL OF ACTION TO FEDERAL  
COURT - 2  
No. 18-2-00455-1

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## **CERTIFICATE OF SERVICE**

I, hereby certify under penalty of perjury of the laws of the State of Washington that on the 19<sup>th</sup> day of January 2018, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

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DATED this 19 day of January 2018.

Sabrina Mitchell  
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NOTICE TO CLERK OF REMOVAL OF ACTION TO FEDERAL  
COURT - 3  
No. 18-2-00341-5

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